

**E UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

TERRY TYLER,

Defendant.

CASE NO. 8:02CR213

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's pro se emergency petition for a writ of mandamus (Filing No. 199).

On July 17, 2002, the Defendant, Terry Tyler, was charged in a three-count Indictment with: conspiracy to distribute and possess with intent to distribute cocaine base (Count I); possession with intent to distribute cocaine base (Count II); and criminal forfeiture (Count III). After having two attorneys, the Court granted Tyler's motion to proceed pro se, appointing Tyler's last attorney as standby counsel. Tyler filed two petitions for a writ of mandamus, which the Eighth Circuit denied. After his jury trial began, Tyler pleaded guilty to Counts I and III of the Indictment. On July 28, 2004, Tyler was sentenced to 292 months imprisonment and 5 years supervised release. The sentence was at the low end of the guideline range. On the government's motion, the Eighth Circuit dismissed Tyler's direct appeal. Tyler filed a motion that was treated as a motion to vacate his sentence under 28 U.S.C. § 2255, which the Court withdrew on Tyler's motion. Tyler filed two motions to reduce his sentence based on Amendment 706 to the crack cocaine guidelines, which the Court denied based on the drug quantity and Tyler's career offender status. The Eighth Circuit affirmed this Court's denial of those motions and denied Tyler's

petition for rehearing. The U.S. Supreme Court denied Tyler's petition for a writ of certiorari. The instant motion followed.

The Court has read the motion very carefully and is unable to determine the precise nature of Tyler's argument(s). Generally, Tyler is dissatisfied with his sentence. Because the previous rulings of this Court, the Eighth Circuit, and the Supreme Court have all addressed previously raised concerns regarding Tyler's his sentence and concluded that his sentence was correct, Tyler's emergency petition for a writ of mandamus is denied.

IT IS ORDERED:

1. The Defendant's emergency petition for a writ of mandamus (Filing No. 199) is denied; and

2. The Clerk is directed to mail a copy of this memorandum and order to the Defendant at his last known address.

DATED this 14th day of January, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge